

11

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U.S. BANKRUPTCY  
DISTRICT OF ARIZONA

1 **ANDREW C. BAILEY**  
2 2500 N. Page Springs Rd  
3 Cornville, AZ 86325  
4 928 634-4335  
5 *Self-Represented Litigant*

6 **IN THE UNITED STATES BANKRUPTCY COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 **ANDREW C. BAILEY**  
9 Plaintiff

Chapter 11

10 vs

Case #: 2:09-bk-06979-PHX-RTBP

2:09-ap-1728

11 THE BANK OF NEW YORK MELLON, F/K/A  
12 THE BANK OF NEW YORK

13 CWALT, INC. ALTERNATIVE LOAN TRUST  
14 2007- HY4 MORTGAGE PASS-THROUGH  
15 CERTIFICATES, SERIES 2007-HY4 (CWALT)

**COMPLAINT FOR DISCOVERY,  
EVIDENTIARY HEARING,  
ENFORCEMENT OF QUALIFIED  
WRITTEN REQUEST AND  
TEMPORARY RESTRAINING  
ORDER**

16 BAC HOME LOANS SERVICING LP F/K/A  
17 COUNTRYWIDE HOME LOANS (BAC)

18 COUNTRYWIDE HOME LOANS

19 THE MORTGAGE ELECTRONIC  
20 REGISTRATION SERVICE (MERS)

21 JOHN DOES "1001-2000"  
22 Defendants

23 Plaintiff sues Defendants to compel discovery, to answer the Qualified Written Request  
24 and Debt Validation Letter pursuant to the Real Estate Settlement Procedures Act  
25 (RESPA), and to stay any foreclosure or other action until the resolution of this  
complaint, and states:

1 **I. Jurisdiction, Venue and Statutory Predicate**

2  
3 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.  
4 This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in  
5 this Court pursuant to 28 U.S.C. §§ 1408 and 1409.  
6

7 2. The primary statutory predicate for the relief requested herein is Federal Rule of  
8 Bankruptcy Procedure 7001(2) to determine the validity, priority, or extent of a lien or  
9 other interest in property, other than a proceeding under Rule 4003(d), and Federal Rule of  
10 Bankruptcy Procedure 7001(9) to obtain a declaratory judgment relating to the foregoing.  
11 Other Rules may apply.  
12

13 **II. Parties Known and Unknown**

14  
15 3. There appear to be multiple known and unknown stakeholders with potential claims  
16 relating to the subject Property and mortgage "loan". Plaintiff seeks discovery as to  
17 exactly who these stakeholders and other parties are, what their respective rights are  
18 under the law, and how much, if anything, he owes them.  
19

20 4. Plaintiff is a resident of the State of Arizona living in and otherwise using and  
21 occupying his home located at 2560 North Page Springs Rd, Cornville, AZ 86325  
22 (hereafter the "Property")  
23

24 5. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF  
25 NEW YORK is and was, at all times material hereto, a corporation doing business in the

1 State of Arizona and functioning as alleged trustee for another corporation or entity  
2 identified as CERTIFICATEHOLDERS, CWALT, INC. ALTERNATIVE LOAN TRUST 2007-  
3 HY4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HY4.  
4

5 6. Defendant CERTIFICATEHOLDERS, CWALT, INC. ALTERNATIVE LOAN TRUST 2007-  
6 HY4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HY4 (CWALT) is a  
7 corporate or other entity unknown to the Plaintiff. The current status and standing of  
8 Defendant CWALT in the instant case is unknown to Plaintiff.  
9

10  
11 7. Defendant BAC HOME LOANS SERVICING LP F/K/A COUNTRYWIDE HOME  
12 LOANS (BAC) is and was, at all times material hereto, the alleged "originator" and  
13 "servicer" of the subject "loan". The current status and standing of Defendant BAC in the  
14 instant case is unknown to Plaintiff.  
15

16  
17 8. Defendant COUNTRYWIDE HOME LOANS (COUNTRYWIDE) is and was, at all times  
18 material hereto, the alleged "originator" and "servicer" of the subject "loan". The current  
19 status and standing of Defendant COUNTRYWIDE in the instant case is unknown to  
20 Plaintiff.  
21

22  
23 9. Defendant THE MORTGAGE ELECTRONIC REGISTRATION SERVICE (MERS)  
24 is a corporation organized in the State of Delaware doing business in the State of Arizona.  
25 MERS, a mortgage recording service, is the current beneficiary under the deed of trust,

1 according to the records of Yavapai County, Arizona. The current status and standing of  
2 Defendant MERS in the instant case is unknown to Plaintiff.

3  
4 10. Defendants JOHN DOES "1001-2000" are undisclosed, unnamed and unknown  
5 investors, participants, corporate or other entities, conduits, trustees, servicers,  
6 custodians and others in a commonly-applied mortgage securitization scheme that may or  
7 may not have included the subject "loan" and who may or may not be investors or  
8 certificateholders in Defendant CWALT, an entity selling a mortgage-backed investment vehicle or  
9 vehicles which may or may not be secured in whole or in part by the subject "loan".  
10

11 **III. Background Material Facts and Grounds for Complaint**  
12

13 11. On April 8th, 2009 three of Plaintiff's unsecured creditors filed an involuntary petition  
14 against the Plaintiff for relief under Chapter 7 of title 11 of the United States Code (the  
15 "Bankruptcy Code").  
16

17 12. On May 28th, 2009 (the "Petition Date"), this Court entered an order granting Plaintiff's  
18 motion to convert to Chapter 11 thereby commencing the above-captioned case.  
19

20 13. Plaintiff is operating his businesses and managing his properties as debtor-in-  
21 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.  
22

23 14. Plaintiff has subsequently filed and revised all schedules and other necessary  
24 documents, and has satisfied all of the requirements of the Bankruptcy Court and the US  
25 Trustee in the case to date.

1  
2 15. The United States Trustee's office conducted the initial creditors' meeting  
3 pursuant to 11 U.S.C. § 341 on September 4, 2009.  
4

5 16. Plaintiff has initiated forensic reviews of his alleged mortgage-related obligations with  
6 the goal of determining who his creditors are, and how much is owed to them.  
7

8 17. Additionally Plaintiff has served, pursuant to the Real Estate Settlement Procedures  
9 Act, a Qualified Written Request and Debt Validation Letter on the Defendants through  
10 their attorneys of record, where known, in a diligent attempt to clarify the above issues.  
11 No timely response to the subject request has been received as of the date of the  
12 Complaint. A Certificate of Non-Response and a Certificate of Dishonor is being filed with  
13 the appropriate authorities.  
14

15 18. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK  
16 has instituted a foreclosure proceeding to foreclose on a mortgage as to the Property  
17 which mortgage was originally issued in the name of Defendant COUNTRYWIDE.  
18 COUNTRYWIDE was also the originating "lender" on the Note. The subject action seeks  
19 to foreclose on the same Property which is the subject of the mortgage and foreclosure  
20 action originally issued by Defendant COUNTRYWIDE herein and is simultaneously the  
21 same Property which is the subject of a Proof of Claim filed by Defendant BAC HOME  
22 LOANS SERVICING LP herein.  
23

24 19. Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK  
25 has apparently taken the position that either Defendant COUNTRYWIDE or Defendant

1 BAC or Defendant MERS or all three previously assigned the mortgage originally issued  
2 by Defendant COUNTRYWIDE and re-conveyed to MERS as to the Property to  
3 Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK.  
4

5 20. No such Assignment or re-assignment has been produced to the Plaintiff or to the  
6 Court, and Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
7 YORK has failed to prove that it is the holder of all rights under the Note, which would  
8 permit the legal holder thereof to declare a default which would trigger a foreclosure.  
9

10 21. Further, Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
11 YORK, as alleged Trustee for unnamed 'Certificateholders' of a series of mortgage-backed  
12 securities, has failed to demonstrate that it, and not the Certificateholders, is the party  
13 with the true ownership interest in the Mortgage the subject of this action, or that the  
14 Certificateholders have acceded or legally assigned their rights to and under the subject  
15 Mortgage to Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
16 YORK, specifically the right to seek a foreclosure.  
17

18 22. As such, Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
19 YORK has not demonstrated that it has suffered an actual or threatened injury as a  
20 consequence of any default, which distinct and palpable injury is legally required under  
21 applicable Federal and State law in order for Defendant THE BANK OF NEW YORK  
22 MELLON, F/K/A THE BANK OF NEW YORK to satisfy the legal prerequisite to prove that  
23 it has a sufficient personal stake in and legal standing to institute the foreclosure on the  
24 Property.  
25

1 23. As a severance of the ownership and possession of the original Note and Mortgage  
2 has apparently occurred and as the true owner and holder of both the original Note and  
3 Mortgage are unknown as a result of one or more alleged assignments and the parsed sale  
4 of certain rights under the Note in part to at least one third party (Defendant MERS),  
5 Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK is  
6 legally precluded from foreclosing on the Property unless and until it can demonstrate full  
7 legal standing to do so.

8  
9 24. As set forth above, Defendants BAC and COUNTRYWIDE are only the alleged  
10 "servicers" of the Note, and as such cannot institute or maintain a foreclosure proceeding.

11  
12 25. As set forth above, Defendant MERS is only the "recorder" of the Note, and as such  
13 cannot institute or maintain a foreclosure proceeding.

14  
15 26. This Complaint is being timely filed in accordance with applicable law to challenge the  
16 foreclosure prior to any Trustee Sale or the issuance of any Certificate of Title following  
17 sale.

18  
19 **IV. RELIEF SOUGHT**

20  
21 Plaintiff reaffirms and realleges paragraphs 1 through 26 hereinabove as if set forth more  
22 fully hereinbelow.

23  
24 27. Plaintiff requests a hearing based on the rules of evidence and founded on common  
25 discovery and enforcement in obtaining relevant information about his loan.

1  
2 28. Plaintiff requests discovery pursuant to Bankruptcy Rules 7026 thru 7037 and FRCP 26  
3 thru 37 including but not limited to enforcement of the RESPA QWR and DVL to test the  
4 merits of Defendant THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW  
5 YORK's allegation that they have the right to enforce the note.  
6

7 29. Plaintiff seeks a complete accounting from those individuals, entities or parties  
8 involved in the origination, servicing, and securitization of his loan, so that he can  
9 discover what undisclosed fees were paid under TILA and RESPA, and the true identities  
10 of the people involved in Plaintiff's table-funded loan.  
11

12 30. Plaintiff seeks the disclosure of the identity(ies) of the true lender(s) who actually  
13 funded the subject loan, and the production of documents and names, addresses and  
14 phone numbers of people who can testify under oath at the evidentiary hearing.  
15

16 31. Plaintiff requests the opportunity to admit evidence, including but not limited to the  
17 results of a forensic analysis of the subject loan and documents on record at the County  
18 Recorder's office.  
19

20 32. Plaintiff requests the opportunity to present expert witness Neil F. Garfield, MBA, JD  
21 or other expert witness at the evidentiary hearing.  
22

23 33. Plaintiff requests that the Court give serious consideration to Dr. Garfield's expert  
24 opinions and testimony as they may apply to Plaintiff's situation and to the situation of  
25 millions of other homeowners facing foreclosure.



1 34. Plaintiff requests a declaratory judgment relating to the foregoing,  
2

3 35. Finally, Plaintiff requests that the court impose a temporary restraining order enjoining  
4 Defendants from taking any further foreclosure or other action before the resolution of the  
5 foregoing, thereby maintaining the status quo until discovery has been conducted  
6

7 WHEREFORE, Plaintiff respectfully requests that the Court order and grant  
8 (a) an evidentiary hearing on the merits, and (b) discovery and enforcement in obtaining  
9 all relevant information, and (c) enforcement of the disclosure requirements of the Real  
10 Estate Settlement Procedures Act, and (d) the production of documents, and (f) the  
11 opportunity to bring an expert witness or witnesses before the court, and (g) a declaratory  
12 judgment relating to the foregoing, and (f) a temporary restraining order as set forth  
13 above, and (e) such other and further relief as may be just and proper.  
14  
15  
16


17 Dated December 22, 2009  
18  
19

20   
21

22 \_\_\_\_\_  
Andrew C. Bailey, Plaintiff  
23  
24  
25

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only) <b>09-1728</b>
<b>PLAINTIFFS</b>  <b>ANDREW C. BAILEY</b>	<b>DEFENDANTS</b> <b>BANK OF NEW YORK MELLON, CWAFT INC</b> <b>BAC HOME LOANS SERVICING LP</b> <b>COUNTRYWIDE, MERS</b> <b>JOHN DOES "1001-2000" ET AL</b>	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b>  <b>NONE - PRO SE</b>	<b>ATTORNEYS (If Known)</b> <b>GUST ROSENFELD, 1 SOUTH CHURCH AVE #1900</b> <b>TUCSON AZ 85701-1620</b>	
<b>PARTY (Check One Box Only)</b> <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b> <b>Discovery, evidentiary hearing, enforcement of RESPA, Temporary restraining order. FRBP 7001(2), 7001(9), 7026-7037, FRCP 26-37. 12 USC 2605(e) 15 USC 1601</b>		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) - Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other <b>FRBP 7001(2) - Validity, Priority or Extent of Lien</b> <input checked="" type="checkbox"/> 1. 21-Validity, priority or extent of lien or other interest in property <b>FRBP 7001(3) - Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) <b>FRBP 7001(4) - Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) <b>FRBP 7001(5) - Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation <b>FRBP 7001(6) - Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	<b>FRBP 7001(6) - Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other <b>FRBP 7001(7) - Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief - reinstatement of stay <input type="checkbox"/> 72-Injunctive relief - other <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest <b>FRBP 7001(9) Declaratory Judgment</b> <input checked="" type="checkbox"/> 2. 91-Declaratory judgment <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause <b>Other</b> <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
<b>Other Relief Sought</b> <b>1. Enforcement of RESPA and TILA.</b> <b>2. Temporary Restraining Order.</b>		

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DISTRICT OF ARIZONA

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR <b>ANDREW C. BAILEY</b>		BANKRUPTCY CASE NO. <b>2:09-bk-06979-PHX-RTBP</b>	
DISTRICT IN WHICH CASE IS PENDING <b>ARIZONA</b>	DIVISIONAL OFFICE <b>PHX</b>	NAME OF JUDGE <b>BALM</b>	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE <b>12/22/2009</b>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <b>ANDREW C. BAILEY</b>		

Print Form

**INSTRUCTIONS**

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by an attorney, the plaintiff must sign. Case presented by Deb-SEC, number of Filed 12/23/09. Enter plaintiff's case, this is not represented by an attorney, the plaintiff must sign.